DISCUSSION PAPER

Guidelines on Employee Benefit Plans in Manitoba

LEGISLATIVE LIBRARY
WITHDRAWN
LEGISLATIVE LIBRARY OF ONTARIO
TORONTO
FEB 3 1981
RECEIVED

Second Draft

Approved for study and discussion purposes only. The Manitoba Human Rights Commission invites comments from interested individuals and groups. March 22, 1980

THE MANITOBA HUMAN RIGHTS COMMISSION

March 22nd, 1980

THE MANITOBA HUMAN RIGHTS COMMISSION PROPOSED GUIDELINES FOR EMPLOYEE BENEFIT PLANS

Introduction

The Manitoba Human Rights Act prohibits discrimination against persons in terms or conditions of employment because of the age , sex, family status, physical handicap or marital status of an employee:

"6(1) Every person has the right of equality of opportunity based upon bona fide qualifications in respect of his occupation or employment or in respect of training for employment or in respect of an intended occupation, employment, advancement or promotion, and in respect of his membership or intended membership in a trade union, employers' organization or occupational association; and, without limiting the generality of the foregoing

(a) no employer or person acting on behalf of an employer, shall refuse to employ, or to continue to employ or to train the person for employment or to advance or promote that person, or discriminate against that person in respect of employment or any term or condition of employment;

because of race, nationality, religion, colour, sex, age, marital status, physical handicap, ethnic or national origin, or political beliefs or family status of that person.

7(2) No provision of section 6 or subsection (1) shall prohibit a distinction on the basis of age, sex, family status, physical handicap or marital status

(a) in any employee benefit plan or in any contract which provides an employee benefit plan, if the Commission is satisfied on the basis of the guidelines set out in the regulations that the distinction is not discriminatory or that the employee benefit can be provided only if the distinction is permitted."

THE MANITOBA HUMAN RIGHTS COMMISSION

PROPOSED GUIDELINES FOR EMPLOYEE BENEFIT PLANS

Interpretation

1. In these Guidelines,

"Act" means The Human Rights Act of Manitoba.

"benefit", in respect of an employee benefit plan, includes:

(a) an aggregate amount or an annual, a monthly or other periodic amount or the accrual of such amounts to which an employee or his beneficiary, survivor, spouse, child or dependant is or may become entitled on superannuation, retirement, termination of employment, disability, accident, sickness or death,

(b) any amount to which one of the persons referred to in paragraph (a) is or may become entitled under the plan for medical, hospital, nursing, drug or dental expenses or other similar expenses, and

(c) any amount to which one of the persons referred to in paragraph (a) is or may become entitled under the plan on superannuation, retirement or termination of employment or to which any person is or may become entitled on the death of another person.

"child" means a natural child, stepchild or adopted child of an employee, but otherwise is as determined in the employee benefit plan, provided such determination is made on the basis of an objective standard applied uniformly.

"dependant" means the dependant of an employee, other than an employee's spouse or child, as determined in the employee benefit plan, provided such determination is made on the basis of an objective standard applied uniformly.

"disability income insurance plan" or "disability income benefit plan" means a plan, fund or arrangement provided, furnished or offered to an employee that provides, in accordance with the terms of the plan, fund or arrangement, benefits to the employee for loss of income because of sickness, accident or disability.

"employee benefit plan" means an insurance plan or a pension plan, whether or not the terms and conditions thereof have been set out in writing.

101-06973/

"family status" includes the status of an unmarried person or parent, a widow or widower or that of a person who is divorced or separated, or the status of the children dependants or members of the family of a person.

"health insurance plan" or "health benefit plan" means a plan, fund or arrangement provided, furnished or offered to or in respect of an employee that provides benefits:

(a) to the employee or to the spouse, child or dependant of the employee, or

(b) in the case of a deceased employee, to the spouse, child or dependant of the employee, for medical, hospital, nursing, drug or dental expenses or other similar expenses.

"insurance plan" means a disability income insurance plan, a health insurance plan or a life insurance plan.

"life insurance plan" means a plan, fund or arrangement provided, furnished or offered to an employee that provides benefits:

(a) on the death of the employee, to a beneficiary, survivor or dependant of the employee, or

(b) on the death of the spouse, a child or a dependant of the employee, to the employee, payable either in a lump sum or by periodic payments.

"normal pensionable age" means the age specified in a pension plan at which an employee:

(a) has the right to retire without the consent of the employer or any other party,

(b) wishing to retire has no service requirement to fulfill, and

(c) on such retirement receives the regular pension benefit provided by the plan without any actuarial or similar reduction being assessed because retirement is occurring before some later specified age.

"objective standard applied uniformly" means a standard which does not classify persons by sex, marital status or family status.

"pension plan" means a superannuation, retirement or pension plan, fund or arrangement provided, furnished or offered to an employee which provides benefits to or in respect of the employee on the superannuation, retirement or termination of employment of the employee and as such includes:

(a) a defined benefit pension plan under which the benefits are determined by reference to:

(i) a percentage of the salary, wages or other remuneration of the employee in addition to the length of employment of the employee or a specified period of employment, or

(ii) the length of employment of the employee or a specified period of employment,

(b) a money purchase pension plan under which the benefits are determined by reference to:

(i) the accumulated amount of the contributions paid by or to the credit of the employee and the investment income, gains, losses and expenses in respect of those contributions, or

(ii) the accumulated amount of the benefits purchased by each contribution paid by or to the credit of the employee,

(c) a profit-sharing pension plan under which contributions by an employer are determined by reference to the profits earned from his business, and the benefits are determined by reference to:

(i) the accumulated amount of the contributions paid by or to the credit of the employee and the investment income, gains, losses and expenses in respect of those contributions, or

(ii) the accumulated amount of the benefits purchased by each contribution paid by or to the credit of the employee, and

(d) a composite pension plan the terms and conditions of which are any combination of the terms and conditions of a defined benefit pension plan, a money purchase pension plan and a profit-sharing pension plan or any 2 of these plans.

"public plan" means the Canada Pension Plan, the Quebec Pension Plan, or the Old Age Security Act.

"spouse" includes the person who is the common-law spouse of the employee, if:

(a) for at least the period determined in accordance with the plan but not exceeding 3 years immediately before the applicable event that causes a benefit to be paid under the terms of the plan:

(i) that person had been residing continuously with the employee who was a member of the opposite sex, whom, by law, that person was prohibited from marrying by reason of a previous marriage either of the employee or of himself, and

(ii) throughout that period, the employee and that person had been publicly represented as husband and wife, or

(b) for at least the period determined in addordance with the plan but not exceeding 1 year immediately before the applicable event that causes a benefit to be paid under the terms of the plan:

(i) that person had been residing continuously with the employee who was a member of the opposite sex, and neither that person nor the employee was married to any other person, and

(ii) throughout that period, the employee and that person had been publicly represented as husband and wife.

"valid cost differences" means differences in cost calculated by using assumptions based on actual experience for that employee benefit plan or, in the absence of sufficient experience, on actual experience in plans or groups of plans whose experience is available and is considered to be sufficiently similar to be suitable for use.

"voluntary employee contribution" means a contribution made voluntarily by an employee to or under a benefit plan, except a contribution the payment of which, under the terms of the plan, imposes on an employer an obligation to make a concurrent additional contribution to or under the plan.

General Principles

2. All employee benefit plans available as a result of employment with an employer or group of employers can be taken into consideration when determining if an employee benefit plan is discriminating unfairly. This permits distinctions to be made on the basis of the age, sex, marital status or family status in a particular plan, provided there is a compensating distinction made in another plan applicable to the same group of employees.

Employees who were previously prevented from participating in an employee benefit plan because of discriminatory rules shall not be required to participate when these rules are removed, but shall have the right to indicate, within a limited period of time, if they wish to participate. This right does not apply to employees who decided not to participate in the benefit plan when given an opportunity to do so.

An employee benefit plan shall not be the vehicle used to terminate the service of employees or give reason for not employing a person because of the age, sex, marital status, physical handicap or family status of such person.

Any changes made to an employee benefit plan in order to comply with the Human Rights Act shall not cause any reduction in the value of the benefits provided as a result of service prior to the date these changes are made to comply with the Act. The rights of employees or beneficiaries to receive benefits under the plan shall not be adversely affected by changes made to comply with the Act. After these changes are made, the terms or conditions of the plan must be equalized, except where variation is permitted under these Guidelines.

Each employee benefit plan must be in compliance with the Human Rights Act within 1 year of the date the Guidelines are implemented as Regulations, unless the benefit plan is subject to a Collective Agreement. In that event, the employee benefit plan must be in compliance with the Act within 1 year of the date the Guidelines are implemented as Regulations or, if later, by the effective date of the Collective Agreement which replaces the Collective Agreement in effect on the date the Guidelines are implemented as Regulations.

No term or condition of an employee benefit plan shall cause or permit differences in treatment to occur because of the age, sex, marital status, physical handicap or family status of an employee, unless such distinction is permitted under these Guidelines.

Participation in Employee Benefit Plans

3. The following distinctions may be made in determining an employees' right to participate in an employee benefit plan:

(a) in the case of any pension plan, provisions that result in:

(i) an employee not being required or permitted to participate in the plan until the employee has attained the age of not more than 25 years, where employees do not make contributions to the plan,

(ii) an employee not being required to participate in the plan until the employee has attained the age of not more than 25 years, where employees make contributions to the plan,

(iii) an employee being excluded from participation in the plan because, at the age he would otherwise have become eligible, he had passed the normal pensionable age for that plan, and

(iv) an employee being unable to accrue benefits under the plan in respect of his periods of service prior to the time he became a member of the plan because he did not satisfy the requirements in respect of health in order to accrue such benefits,

(b) in the case of any disability income insurance plan, provisions that result in an employee being excluded from participation in the plan because the employee has attained the age (less the length of any waiting period following the commencement of a disability that must be completed before benefits become payable thereunder), specified in the plan, if that age is not less than the age at which retirement benefits first become available under a public plan, or the normal pensionable age under the pension plan of which the employee is a member, whichever occurs first,

(c) in the case of any disability income insurance plan or health insurance plan, provisions that result in an employee of an employer employing less than 25 employees being excluded from participation in the plan in respect of health, in order to participate therein,

(d) in the case of any voluntary employee-pay-all insurance plan or any insurance plan that has a voluntary employee contribution feature, provisions that result in an employee being excluded from participation in the plan or in the voluntary employee contribution feature, as the case may be, because he does not satisfy the requirements in respect of health in order to participate therein, and

(e) provisions of any benefit plan that result in an employee being excluded from participation in the plan:

(i) because the employee chose not to participate in the plan when he was first eligible to do so and he did not satisfy the requirements in respect of health in order to participate in the plan on subsequently to participate therein, or

(iii) until the first day on which the employee is actively at work after he has satisfied all other requirements for participation therein.

Benefit Provisions

4. Distinctions may be made in determining eligibility for benefits or the amount of benefits under a pension plan by the use of provisions that result in:

(a) eligibility for various benefits under the plan being subject to the attainment by a person of specified ages,

(b) differentiation being made between employees in the amounts of the monthly or other periodic benefits payable under the plan to or in respect of the employees:

(i) because of age where recognition is given to the availability of benefits payable under a public plan, provided the adjustment is permitted under and is made in accordance with the Pension Benefits Act and any regulations thereunder,

(ii) because of the age at which the benefits commence, where such differentiation is determined on the basis of valid cost differences,

(iii) becuase of marital status, where:

A. benefits are payable periodically to the surviving spouse of a deceased employee, or

B. an increase in benefits is payable to a former employee because the employee has a dependent spouse, or

(iv) because benefits are payable periodically to or in respect of a surviving child of a deceased employee,

(c) differentiation being made between employees:

(i) because of marital status, where a lump-sum benefit is payable under the plan to the surviving spouse of a deceased employee, or

(ii) because a lump-sum benefit is payable under the plan to or in respect of a surviving child of a deceased employee,

(d) in the case of any voluntary employee-pay-all pension plan, or any pension plan that has a voluntary employee contribution feature, provisions of such a plan respecting voluntary employee contributions that result in differentiation being made between employees in the amounts of the benefits provided under the plan to or in respect of the employees because of sex, where such differentiation is determined on the basis of valid cost differences, and

(e) differentiation being made between employees when benefits payable under the plan to or in respect of the employees are converted under an option contained therein, in the amounts of those benefits because of sex, provided any such differentiation is determined on the basis of valid cost differences.

5. Distinctions may be made in determining eligibility for benefits or the amount of benefits under an insurance plan by:

(a) in the case of any voluntary employee-pay-all life insurance plan or any life insurance plan that has a voluntary employee contribution feature, provisions respecting voluntary employee contributions that result in differentiation being made between employees in the amounts of the benefits payable under the plan to or in respect of the employees because of age, where such differentiation is determined on the basis of valid cost differences,

(b) in the case of any disability income insurance plan, provisions that result in differentiation being made between employees because the benefits payable under the plan to an employee cease when the employee has attained either the age at which retirement benefits first become available under a public plan, or the normal pensionable age under the pension plan of which the employee is a member, whichever occurs first,

(c) in the case of any disability income insurance plan or health insurance plan, provisions that result in differentiation being made between employees because, during a period not exceeding one year after the date when an employee first became insured under the plan, the benefits under the plan are not payable to the employee in respect of conditions arising from an injury, accident or sickness that commenced prior to that date and in respect of which the employee had received medical care, treatment or services, drug therapy or medicine prescribed by a qualified medical practitioner during a period not exceeding 1 year prior to that date,

(d) in the case of any disability income insurance plan or life insurance plan, provisions that result in differentiation being made between employees because the rate or the amount of benefits payable under the plan to or in respect of a member of the plan who satisfies certain requirements as to health, exceeds the maximum rate or amount of benefits payable under the plan to or in respect of a member of the plan who does not satisfy those requirements as to health,

(e) in the case of any life insurance plan, provisions that result in differentiation being made between employees:

(i) because of marital status, where:

A. benefits are payable on the death of an employee, in a lump-sum or periodically, to the surviving spouse of the employee, or

B. benefits are payable to an employee, in a lump-sum or periodically on the death of his spouse, or

(ii) because benefits are payable on the death of an employee, in a lump-sum or periodically, to or in respect of a surviving child or dependant of the employee or benefits are payable to an employee, in a lump-sum or periodically, on the death of his child or dependant,

(f) in the case of any health insurance plan, provisions that result in differentiation being made between employees:

(i) because of marital status in order to provide benefits for the spouse of an employee, or

(ii) because benefits are provided under the plan to a child or dependant of the employee, and

(g) in the case of any life insurance plan, provisions that result in differentiation being made between dependants in the amount of the benefit paid on the death of the dependant, provided no distinction is made according to sex or marital status, and

(h) in the case of a life insurance plan, provisions that result in lump-sum benefits which vary by age of the employee, provided such variation is equivalent to the variation which would exist if a level income benefit had been provided.

6. A benefit plan may provide a lower benefit, no benefit or a benefit for a shorter period of time if an employee is on leave of absence. If some benefits are provided during a leave of absence under a short-term or long-term disability plan because of disability resulting from sickness, equal benefits must be provided for the same period if disability results from complications due to pregnancy, or if an unrelated disability occurs during pregnancy leave.

Contributions

7. Distinctions may be made in determining contributions under an employee benefit plan by the use of provisions that result in:

(a) differentiation being made between employees in the rates of contribution of the employer to the plan, where such differentiation is made on the basis of valid cost differences in order to provide equal benefits to the employees,

(b) differentiation being made between employees in the rates of contribution of the employer to a defined benefit pension plan, where such differentiation is made on the basis of valid cost differences in order to provide an increase in benefits under the plan to a former employee in respect of his dependent spouse or to pay benefits under the plan to the surviving spouse of a deceased employee or to or in respect of a surviving child of a deceased employee;

(c) differentiation being made between employees in the rates of contribution of employees to a money purchase pension plan or a profit-sharing pension plan, if there is a corresponding increase in employer contributions and such differentiation is made on the basis of valid cost differences because of age in order to provide equal benefits to the employees,

(d) differentiation being made between employees in the rates of voluntary contributions of an employee to the plan, where such differentiation is made on the basis of valid cost differences,

(e) differentiation being made between employees in the rates of contribution of the employer to the plan, where such differentiation is made on the basis of valid cost differences because of any or all of age, physical handicap or sex in order to provide equal benefits under the plan to the employees,

(f) differentiation being made between employees in the rates of contribution of employees or the employer, or both, to any life insurance plan, where such differentiation is made on the basis of valid cost differences because of marital status in the case of employee contributions, or because of any or all of age, physical handicap, sex or marital status in the case of employer contributions, in order to pay benefits under the plan to the surviving spouse of a deceased employee or to or in respect of a surviving child or dependant of a deceased employee,

(g) differentiation being made between employees in the rates of contribution of employees or the employer, or both, to a life insurance plan or a health insurance plan, where such differentiation is made on the basis of valid cost differences because of marital status in order to pay benefits under the plan on the death or for the health care of the spouse, children and dependants of an employee,

(h) differentiation being made between employees in the rates of contribution of employees or the employer, or both, to the plan, where such differentiation is made because of the circumstances described in paragraph 5(b), (c) or (d), as the case may be,

(i) in the case of any voluntary employee-pay-all insurance plan or any insurance plan that has a voluntary employee contribution feature, provisions respecting voluntary employee contributions that result in differentiation being made between employees in the rates of contribution of employees to the plan, where such differentiation is determined on the basis of valid cost differences, and

(j) differentiation being made between employees in the rates of contribution of an employer to the benefit plan because an employee has exercised an option not to participate in the whole or a portion of the plan.